

stations, since she does not hire Station Managers for TBN. (Id. ¶¶63, 189.) If NMTV were the same as TBN, NMTV's Station Managers would not report to her, since TBN's do not. (Id. ¶63; MMB Ex. 309; MMB Ex. 317.) If NMTV were the same as TBN, she would not review the company's expenditures, since she does not do that for TBN. (TBF PFCL ¶63.) The record of Mrs. Duff's greater responsibilities for NMTV, together with her rejection of positions urged by Paul Crouch on various key decisions, establish that she does in fact function as a member of NMTV's Board in her own right. In short, while she works at TBN, she directs the policies and runs the operation of NMTV. That is a material difference.

(B) Removal Provisions and Corporate Structure

94. Glendale/SALAD also try an indirect attack premised on the language of NMTV's corporate documents. (Glendale PFCL I ¶¶17, 20, 32, 43, 87, 619; SALAD PFCL ¶19, 72.) They essentially argue that Jane Duff cannot be counted as a minority member of the NMTV Board in her own right because (a) NMTV's corporate documents do not state a specific purpose of serving minorities and (b) the number and geographic distribution of minorities on the Board are too small. (Glendale PFCL I ¶¶15, 17, 20, 32, 43, 87, 143, 585, 619; SALAD PFCL ¶¶19, 72.) Therefore, argue Glendale/SALAD, TBN rather than Mrs. Duff and the other minority Directors must control NMTV. (Glendale PFCL I ¶¶589-602; SALAD PFCL ¶19.) That argument strays far from the question of who

makes NMTV's decisions, focuses on the wrong part of the corporate documents, and conflicts with incorporation procedures followed by many other minority companies.

95. NMTV's corporate documents contain two pertinent provisions regarding Directors' control. First, the Bylaws provide that a decision by a majority of the Directors is controlling. (TBF PFCL ¶34.) Second, they provide that a majority of the Board may remove any Director without cause. (Id.) Since Commission law clearly recognizes that the power of removal is a significant indicator of control (TBF PFCL ¶642), and since NMTV's removal provision differs substantially from TBN's, the parties correctly deemed this distinction particularly relevant, and the Bureau requested a comprehensive stipulation of facts. (MMB/TBF Jt. Ex. 1.)

96. The record establishes that by late 1979 Paul Crouch was specifically focused on securing his control over TBN and its affiliates. (TBF PFCL ¶38.)^{11/} He therefore directed that the Bylaws of TBN and its affiliates include provisions assuring that he could not be ousted without cause. (Id.) He sought that protection even though Jane Duff was one of only two other Directors. (TBF PFCL ¶36; MMB/TBF Jt. Ex. 1, p. 3.) Thus, if Dr. Crouch considered Mrs. Duff his "faithful lieuten-

^{11/} In the HDO and TBF's PFCL, the term "TBN affiliates" referred to the broadcast licensees that have the same Directors as TBN. (HDO n. 2; TBF PFCL, p. 2, n. 1.) The same definition is used here.

ant" (Glendale PFCL I ¶588), then he already controlled a majority of the Boards of TBN and its affiliates, could not be removed under the existing provision requiring a majority vote for removal (TBF PFCL ¶36), and did not need to adopt special provisions requiring good cause for removal.

97. After Dr. Crouch's directive, every new TBN affiliate was established with a provision that precluded the removal of Dr. Crouch without cause, as follows:

Trinity Broadcasting of Florida, Inc. -- incorporated January 4, 1980. (MMB/TBF Jt. Ex. 1, Tab C.)

Trinity Broadcasting of Indiana, Inc. -- incorporated March 3, 1981. (Id., Tab D, pp. 1-3.)

Trinity Broadcasting of New York, Inc. -- incorporated December 10, 1981. (Id., Tab G, pp. 5, 6.)

Trinity Broadcasting of Texas, Inc. -- incorporated December 11, 1985. (Id., Tab F.)

In fact, TBN and every TBN affiliate have Bylaws that require more than a majority vote to remove Dr. Crouch. (TBF PFCL ¶38 and n. 19.) Yet, following Dr. Crouch's directive concerning the inclusion of such provisions for TBN and TBN affiliates, NMTV was established in September 1980 without any protection against Dr. Crouch's removal by a majority vote without cause. (Id. ¶¶18-19, 35, 38.)

98. Although Glendale/SALAD try to dismiss this difference as "happenstance" (Glendale PFCL I ¶16), the record compels a different conclusion. The uncontradicted record establishes that the removal for cause provisions were required for TBN and

its affiliates because Dr. Crouch was specifically focused on controlling those corporations. (Tr. 2486.) In the words of Glendale/SALAD, he felt "he deserved protection." (Glendale PFCL I ¶16.) And the reason he needed that protection, even though he and Mrs. Duff were a majority of the Board, was that he does not control her. The same provisions were not included for NMTV, not by happenstance or oversight, but because Dr. Crouch never contemplated or intended to control NMTV. (Tr. 2487.) As Glendale/SALAD put it, "he had no similar feeling with respect to Translator T.V., Inc." (Glendale PFCL I ¶16.) Thus, the fact that he did not seek special removal provisions for NMTV does not prove that he forgot to do so. It proves that NMTV, unlike TBN and its affiliates, was not an entity he sought to control. Accordingly, the evidence concerning the particular provision of NMTV's corporate structure that relates directly to control establishes that Dr. Crouch: (a) never intended to control NMTV; (b) does not control Mrs. Duff, who functions as a member of NMTV's Board in her own right; and (c) is himself, under Commission law, controlled by the power of the Board majority to remove him.

99. Regarding NMTV's statement of corporate purposes and the composition of its Board, the record establishes that NMTV was incorporated merely by using a boilerplate form for creating California nonprofit corporations, and that the authorization for up to ten Directors was simply part of that form. (Tr. 3674, 3881-85.) Moreover, most corporations, including minority

owned corporations, say no more in their formal corporate filings than is necessary to achieve the purpose at hand (e.g. to be incorporated or to gain tax exempt status). For example, Commission records reflect that the Articles of Incorporation of the following prominent minority controlled corporations do not state any specific minority purpose:

(a) **Seaway Communications, Inc.** -- parent of the first licensee to purchase a station under the minority distress sale policy and another licensee that enabled the seller to obtain a minority tax certificate. Articles of Incorporation state "the nature of the business or the purpose to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware, including the ownership and operation of broadcast stations." Owns stations in Rhinelander, Wisconsin, and Bangor, Maine, communities with negligible minority populations. Has no Directors from either of those communities.

(b) **Douglas Broadcasting, Inc.** -- minority owned station group owner. Articles of Incorporation state, "The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code." Has three Directors, none from many communities in which it owns stations.

(c) **Pueblo Broadcasting Corporation** -- first Hispanic owned television licensee and Spanish-language service in Houston, Texas. Articles of Incorporation state no minority purpose.

(d) **Blackstar Communications, Inc.** -- minority owned licensee of three television stations. Articles of Incorporation state no minority purpose. Bylaws authorize up to 15 Directors, but company has only four, none of whom are from any of the communities in which it holds licenses.

(e) **Snowden Broadcasting, Inc.** -- Minority owned company granted licenses for AM/FM combination in New Orleans in transaction that enabled the seller to

obtain a minority tax certificate. Articles of Incorporation state no minority purpose. Bylaws authorize up to five Directors, but company has only one.

100. Accordingly, it is not significant that NMTV's articles and Bylaws officially state no specific minority purpose and authorize more Directors than NMTV has elected. Those aspects of the corporate documents and structure do not define control or show who actually makes policy and directs the operation of NMTV.

(C) Jane Duff's View of NMTV's Purposes

101. In the end, Glendale/SALAD return to the tactic of personal attack, alleging that Jane Duff was not candid when she testified that she perceived NMTV as having the dual purposes of spreading the gospel and advancing minority ownership and programming. (TBF PFCL ¶59; Glendale PFCL I ¶¶618-20.) In taking that approach, Glendale/SALAD once again ignore all contrary evidence.

102. Initially, as indicated, Glendale/SALAD want no consideration given to what Mrs. Duff actually did to implement her concept of NMTV's purposes. (¶¶86-91 above.) They ignore the documented fact that at the June 1987 Board meeting she specifically expressed her concept that NMTV represented "minority controlled television" that she deeply wanted to succeed. (¶86 above.) They ignore the fact that NMTV spent more than \$1.1 million to build a studio for minority-oriented

local production in Portland. (§90 above.) They ignore James McClellan's experience in producing minority-oriented local programs; and Mrs. Duff's instructions that he hire, train, and promote people from the minority community and broadcast minority programming; and the fact that the minority community (in the words of Pastor Hill) is "basically a religious community" whose needs are, as Mrs. Duff and Pastor Espinoza said, significantly served by religious programming. (§§88-89 above; TBF PFCL §§155, 177.)

103. Even going back 14 years to NMTV's formation, the evidence contradicts Glendale/SALAD's claim. Jane Duff invited Armando Ramirez to be an original Director of NMTV, and Dr. Ramirez corroborated that she told him then that "the purpose of the company was to help minorities get involved in the powerful media of communication, and that the government was very interested in seeing minorities, such as Hispanics like myself, be involved and given a chance to participate in the mainstream of American life." (TBF Ex. 103, p. 7.) Dr. Ramirez confirmed this discussion twice at the hearing, reiterating that Mrs. Duff told him "it [NMTV] had to do with minorities and doing programming" and "was part of an effort by the government to get us involved in the process" (Tr. 4108-09), and concluding,

"And in my memory what registers is that this was an exciting opportunity for minority people like myself and that the government was very much interested in minorities being part of the action, mainly getting into the mainstream of American life." (Tr. 4114.)

In fact, based on Mrs. Duff's discussion with him, Dr. Ramirez became "excited" and began thinking about minority-oriented programming NMTV might do. (Tr. 4108, 4114.) These discussions are entirely consistent with Mrs. Duff's testimony that she considered NMTV's goals to include propagating the faith and to give opportunities to minorities, "especially to give opportunities to minority pastors to be a part of the programming." (TBF PFCL ¶59.)

104. What is really involved is a matter of differing perceptions -- Paul Crouch's perception as a non-minority and Jane Duff's perception as a minority. Dr. Crouch perceived that NMTV could serve two purposes, opening opportunities for additional TBN affiliates to spread the gospel, while also fulfilling Commission policy to provide minorities ownership participation. (TBF PFCL ¶¶12, 14.) Those were legitimate purposes. As a non-minority, Dr. Crouch admittedly did not relate those purposes to specific service to minorities (TBF PFCL, p. 129, n. 36), nor was he required to.

105. Mrs. Duff broadly perceived NMTV as serving the same two purposes. But as a minority, she saw much more in those purposes than Dr. Crouch. She saw that the gospel has particular significance to the minority community, and that minority ownership both creates special opportunities for minority service and imposes special obligations for the minority owners to succeed. That was and is her honest perception, and there is

no basis for claiming that she has not been candid. The diversity of perception reflected here is precisely the diversity that the minority ownership policy cultivates.

(3) Propriety of Directors' Participation

106. Advancing yet another fallacious argument while distorting the facts and ignoring adverse evidence, Glendale/SALAD contend that NMTV relinquished de facto control because certain of its Directors allegedly failed to exercise some "minimum" level of supervisory responsibility necessary to be considered true "owners" of the corporation. (Glendale PFCL I ¶¶591-93; SALAD PFCL ¶¶30, 42.) Glendale makes this claim with regard to Pastor David Espinoza, Pastor Phillip Aguilar, Pastor E.V. Hill, and Dr. Armando Ramirez, each of whom it asserts "failed to meet the minimal qualifications necessary to even be considered 'owners.'" (Glendale PFCL I ¶593.) SALAD, on the other hand, addresses only the performance as "corporate fiduciaries" of Pastor Espinoza and Pastor Aguilar, tacitly conceding the propriety of Pastor Hill and Dr. Ramirez's participation as NMTV directors. (SALAD PFCL ¶30.) Both of these attacks, however, overlook essential contrary evidence, misconstrue the facts, and misapply cited case law.

(A) Glendale/SALAD Ignore Key Facts Concerning The Directors' Participation

107. Significantly, Glendale/SALAD urge the adoption of findings and conclusions that provide only half the picture

concerning the foregoing Directors' participation in NMTV's affairs. The complete picture, including what each of the Directors knew and did not know about NMTV's operations, is precisely as detailed in TBF PFCL ¶¶88-120, 125-48, 152-67, 173-75. The evidence establishes that while Pastor Espinoza, Pastor Aguilar, Pastor Hill, and Dr. Ramirez unquestionably had limited or no knowledge about certain matters (which differed from person to person), they did know about many things and did participate in many decisions while guiding the overall policy and affairs of the corporation.

(i) David Espinoza

108. The record shows that Pastor David Espinoza participated in a range of decisions affecting the corporation for which he is not credited by Glendale/SALAD. Beyond his involvement in the decisions discussed at ¶¶43-53, 61-63 above, he was consulted, reviewed a list, and gave his input concerning the preparation of NMTV's initial LPTV applications. (TBF PFCL ¶94.) He spoke with Mrs. Duff occasionally concerning corporate business, and he attended NMTV's annual Board meetings during the years when the corporation was essentially dormant. (Id. ¶96.) He knew that TBN programming was to be delivered by satellite and rebroadcast by NMTV's LPTV stations. (Id. ¶98.) He discussed with Jane Duff and agreed that NMTV should claim a minority preference in its LPTV applications. (Id. ¶99, 246.) He conferred with Mrs. Duff regarding NMTV's opportunity to

purchase the Odessa construction permit. (Id. ¶¶29, 100, 255.) He knew about the financial details of the Odessa transaction. (Id.) He discussed with Mrs. Duff and agreed that NMTV should claim a minority exception in the Odessa application. (Id. ¶¶101, 255.) He knew that NMTV was purchasing the station under the minority exception in view of Dr. Crouch's role on the Board. (Id. ¶101.) He reviewed the Odessa purchase contract at its signing. (Id.) He knew about and agreed with the proposal to appoint TBN as NMTV's accounting agent. (Id. ¶102.) He participated in changing NMTV's corporate name. (Id. ¶103.) He conferred with Mrs. Duff regarding the opportunity for NMTV to purchase the Wilmington station. (Id. ¶105.) He discussed with Mrs. Duff the opportunity for NMTV to purchase the Portland construction permit. (Id. ¶107.) And he attended a special NMTV Board meeting at which the Directors considered a proposal for NMTV to purchase a studio building for the Portland station. (Id. ¶109) During that meeting, he and Mrs. Duff disagreed with Dr. Crouch's position that no more than \$400,000 should be offered for the building. Over Dr. Crouch's opposition they joined in voting to offer up to \$500,000 for the property. (Id.)

109. Additionally, Pastor Espinoza consulted with Jane Duff regarding whether NMTV should sell one of its stations in order to purchase a new one in Concord, California. (Id. ¶112.) He conferred with her about whether Mr. McClellan should be hired to manage the Portland station. (Id. ¶113.) He received periodic calls from her to discuss opportunities for NMTV to

file additional LPTV and translator applications. (Id. ¶114.) He was notified by Mrs. Duff of the agenda before Board meetings, and he conferred with her about things that had transpired at meetings he could not attend. (Id. ¶115.) He received and reviewed financial statements at Board meetings. (Id. ¶120.) And he was fully aware of and consented to the removal of his name as a signatory on NMTV's checking account. (Id.) Hence, a balanced presentation of the facts shows that Pastor Espinoza was far more involved in overseeing NMTV's affairs than Glendale/SALAD have sought to portray.

(ii) Phillip Aguilar

110. Pastor Phillip Aguilar also had more knowledge and involvement in the affairs of NMTV than Glendale/SALAD have suggested. (Glendale PFCL I ¶¶164-85; SALAD PFCL ¶¶32-41.) For instance, Pastor Aguilar was aware from the outset that NMTV was minority owned by virtue of the fact that he and Jane Duff could outvote Paul Crouch. (TBF PFCL ¶125.) He understood that one of NMTV's purposes was to get minorities involved in the production of TV programming. (Id. ¶126.) He knew when he joined the NMTV Board that TBN was at its limit of 12 stations and that NMTV would give it an interest in two more. (Id.) And, he knew that NMTV would be seeking licenses for stations and would claim minority preferences at the FCC. (Id. ¶127.)

111. Upon his election to the Board, Pastor Aguilar learned that NMTV was the licensee of the Odessa and Portland

stations, as well as several low or medium power television stations. He also learned that NMTV had a number of LPTV applications pending. (Id. ¶127.) During a visit to Portland, he interviewed people concerning the performance of NMTV's station and its effect on minorities in the community. (Id. ¶¶130, 145.) He discussed with other Board members the impending completion of the Portland studio and he provided input concerning the type of live programming the station should produce, including programs that would inform people about minority culture and other issues that he felt Dr. Crouch would have no familiarity with because of his background. (Id. ¶130.) After allegations were made that NMTV was not a bona fide minority controlled entity, he joined Pastor Hill in urging that a minority attorney be consulted to review the matter and respond, and he met with Tyrone Brown and the other NMTV Directors to discuss the situation, including his goals for NMTV. (Id.)

112. Pastor Aguilar knew that NMTV was receiving revenue from TBN based on a zip code formula. (TBF PFCL ¶131.) He was aware that NMTV was an affiliate of TBN, that the Portland station carried TBN programming, and that it produced programming that was aired by TBN. (Id.; Tr. 4026-27) He knew that NMTV owed TBN money and that TBN had loaned NMTV funds to purchase its stations. He was given the figures and he participated in discussions concerning how quickly the loans should be repaid. (Id.) He reviewed financial reports at Board meetings, and he understood generally that the Portland station was doing

fine but that the Odessa station's performance was marginal. (Id. ¶130.) He knew that NMTV had audited financial statements and that the auditor was a firm named "Hinds, Goodrich, somebody else, I think. There might be two names or three names." (TBF Ex. 107, p. 62.)^{12/} He knew that NMTV had a personnel manual which he reviewed at a Board meeting. (Id.) He knew that James McClellan was the Portland station manager and he thought that Ben Miller had provided engineering assistance. (TBF PFCL ¶131.) He knew that Terry Hickey and Alan Brown had assisted NMTV in the financial area. (Id.) And he knew that he, Mrs. Duff, and Dr. Crouch were the sole voting principals of NMTV until Dr. Hill joined the Board. (Id.; TBF Ex. 107, p. 210.)

113. Prior to NMTV's October 1990 board meeting, which he was unable to attend, Pastor Aguilar was consulted about and agreed with a proposal to sell the Odessa station. Before joining in that decision, he saw a statement of income and expenses for the station. (TBF PFCL ¶132.) He was advised of the chance for NMTV to acquire a station in Wilmington, Delaware, which he viewed as a significant opportunity. (Id.) He was informed that the Wilmington station was in bankruptcy and he understood that it could be acquired for a modest sum and that it would permit NMTV to reach a larger audience than the Odessa station. (Id. ¶133.) He discussed with the other Directors that a down payment of \$400,000 would be required for

^{12/} The correct name of NMTV's auditing firm was Goodrich, Goodyear & Hines, CPA. (MMB Ex. 413, p. 5.)

Wilmington. He knew that NMTV owed TBN money, and he recalled that an interest rate and term had been discussed. (Id.) Prior to NMTV's January 1991 annual meeting, which he was unable to attend, he discussed the Wilmington acquisition with Dr. Crouch and he was advised of the particulars concerning the purchase, which he approved. (Id. ¶134.) He consented to the Board's action formally authorizing NMTV to sell Odessa. (Id.)

114. On June 27, 1991, Pastor Aguilar attended a special Board meeting during which he was apprised of the status of the Petition to Deny the Wilmington application. (Id. ¶135.) During that meeting, the Directors discussed the status of the Portland studio, the production of live programming, the status of NMTV's five pending LPTV applications, and the closing of the Odessa transaction; and they reviewed financial reports for 1990. (Id.) He knew that Mrs. Duff had been incurring costs on NMTV's behalf, so he proposed a resolution to assure that she would be reimbursed for her expenses. (Id.) He joined the other Directors in executing an action authorizing NMTV to borrow up to \$4 million for the Wilmington station, and he discussed with Mrs. Duff and Dr. Crouch the interest rate and term of the proposed loan. (Id. ¶136.)

115. In September 1991, Pastor Aguilar received a copy of a letter from Colby May addressed to Mrs. Duff and Dr. Crouch reporting the FCC's desire for more information concerning the relationship between TBN and NMTV. (Id. ¶137.) He subsequently

participated in a conference call with FCC counsel and the other Board members, at which no minutes were taken, to help formulate NMTV's response. (Id.)^{13/} He was consulted before the NMTV Board meeting on October 2, 1991, concerning the prospect of electing Pastor Hill to the Board, which he favored and seconded at the Board meeting. (Id. ¶138.) During that meeting, the Board also discussed purchasing the Wilmington assets, which Pastor Aguilar supported. Indeed, he proposed that NMTV acquire the assets, and his motion was adopted. (Id. ¶139.) He subsequently participated in a decision to provide Mr. McClellan with a housing allowance. In 1992, he attended NMTV's annual meeting during which Mr. McClellan reported on the Portland station's local minority programming. (Id. ¶¶140-41.) He knew from talking with Mr. McClellan that the station had a local public affairs program that addressed issues of concern to minorities in the Portland community. (Id. ¶141.) He also participated in a discussion of the NMTV Board concerning the repayment of NMTV's debt to TBN, recalling generally that he favored a five year repayment term. (Id. ¶142.) Above all, during his tenure on the Board Pastor Aguilar kept himself focused on the "big picture" -- helping to set policy and representing a minority perspective -- rather than operational details, which he understood were being handled by Jane Duff. (Id. ¶¶120, 131.) Thus, while he may not have been aware of

^{13/} This was one of several NMTV Board meetings that Pastor Aguilar attended at which no minutes were taken. (TBF PFCL ¶137.)

various details of NMTV's corporate and business operations, he certainly had far more involvement than Glendale/SALAD have sought to convey.

(iii) E.V. Hill

116. Glendale/SALAD casually denigrate Pastor E.V. Hill's participation as a Director through a comparably slanted and myopic recitation of facts. (Glendale PFCL I ¶¶197, 199-207.) The truth is, however, that while Pastor Hill's knowledge of NMTV affairs was not perfect, he clearly did contribute toward directing the corporation's policies and affairs. For example, Pastor Hill reviewed information about NMTV before joining the Board, including how many stations it owned, biographies of the Board members, a corporate financial statement, and NMTV's articles and bylaws. (TBF PFCL ¶153.) He thereafter learned and approved of NMTV's use of the same attorneys and accounting personnel as TBN, and he received assurances that TBN would financially support the corporation. (Id. ¶157.) Additionally, he knew that a majority of the Board members were minorities, that NMTV owned a television station in Portland, that the corporation planned to acquire other stations, and that funding would be provided by loans from TBN. (Id.)

117. During the October 2, 1991, Board meeting at which he was elected, Pastor Hill was informed that the FCC had not acted on the Wilmington application and that NMTV's right to acquire that station had expired. (Id. ¶158.) He was already aware of

NMTV's efforts to purchase the station. (Id.) In accord with his desire that NMTV seek out new opportunities, he made a motion at the January 1992 Board meeting that NMTV seek out and acquire full and low power television stations with the assistance of FCC counsel, Colby May. (Id. ¶159.) He subsequently received from Mr. May information about LPTV stations, including one in the Los Angeles area. (Id.) He also received from Jane Duff a list of NMTV translator stations that were on the air, those that NMTV anticipated building, and those for which it hoped to apply. During the January 1992 meeting, Pastor Hill discussed with the other Board members the pleadings that had been filed challenging NMTV's status as a minority-controlled entity. (Id. ¶160.)

118. Pastor Hill was advised at the January 1992 Board meeting about NMTV's progress in constructing the Portland studio, efforts the station had made to hire and train minority employees, and its plans to establish a Minority Advisory Board. (Id. ¶162.) He strongly encouraged these minority oriented efforts, and he recommended someone to serve on the proposed advisory board. (Id.) Additionally, at other times he voted for NMTV to spend up to \$4 million toward acquiring the Wilmington station's assets, he moved that the Board adopt a schedule for NMTV to satisfy its debt to TBN (initially proposing a seven year payoff but ultimately agreeing to a five year term), he voted to permit Mr. McClellan to hire an additional staff person, he voted to accept Pastor Aguilar's resignation

and nominated Dr. Ramirez to replace him, he approved NMTV's decision to participate in a joint representation agreement with TBN for litigating this proceeding after participating in a discussion regarding potential conflicts of interest, and he voted with the Board to waive the attorney-client privilege in this proceeding. (Id. ¶166.) In sum, his presence and participation on NMTV's Board was far more substantive than Glendale/SALAD have endeavored to project.

(iv) Armando Ramirez

119. Similarly myopic is Glendale/SALAD's attack on Armando Ramirez's performance as a director. Initially, it should be noted that Dr. Ramirez was elected to the NMTV Board in April 1993. This was two years after the Odessa station had been sold in April 1991, and 4½ years after the Portland station had commenced operations. Moreover, he had the opportunity to participate in only two significant actions affecting the corporation during his short tenure on the Board. Thus, Pastor Ramirez can hardly be faulted for not knowing about Odessa operations or details of policies and decisions affecting the Portland station that were implemented well before he joined the Board.

120. In any event, there was much about NMTV that Dr. Ramirez knew. Before joining the Board, he was informed by Jane Duff that NMTV was involved in LPTV stations, that the company owned a full power station in Portland, and that it produced

programming to benefit minorities. (TBF PFCL ¶173.) He was told that NMTV's files were located in her office, and they were made available to him. (Id.) He read the NMTV articles and bylaws and reviewed other NMTV agreements in Mrs. Duff's files. (Id.)^{14/} While on the Board, he learned that TBN and NMTV have program affiliation and business services agreements, that NMTV has a benefits plan, that James McClellan is the station manager of NMTV's Portland station, and that Mr. McClellan has an agreement through NMTV to produce a program for TBN; he also learned the size of the Portland station's staff. (Id. ¶174.) He knew that Jane Duff was authorized to sign checks for the corporation and that two signatures were required, but he could not recall the other authorized signatory. (Tr. 4048.) He knew that Mrs. Duff kept the corporate minutes from reviewing the documents in her office. (Tr. 4051-52.) Moreover, during his tenure on the Board, Dr. Ramirez participated in two formal Board meetings at which he voted to: forgive the debt owed by Prime Time to NMTV; enter into the joint representation agreement with TBN to litigate this proceeding; designate Mrs. Duff to serve as the contact person with the attorneys; and give the FCC full access to all facts concerning the relationship between TBN and NMTV. (TBF PFCL ¶174.)

^{14/} Glendale/SALAD note that copies of NMTV's corporate minutes were maintained by Norman Juggert, the company's original incorporator. (Glendale PFCL I ¶18; SALAD PFCL ¶75.) However, they completely ignore the fact that Jane Duff also maintained copies of the minutes and other corporate documents in her capacity as Secretary of the corporation. (TBF PFCL ¶173.)

121. In short, consideration of the entire record, rather than just the slanted version advanced by Glendale/SALAD, establishes that Pastor Espinoza, Pastor Aguilar, Pastor Hill, and Dr. Ramirez each had knowledge of, and participated in, a variety of corporate and business matters during their respective terms on the Board. Glendale/SALAD's omission of these essential facts makes their proposed findings completely unreliable.

(B) Glendale/SALAD Distort the Directors' Testimony

(i) The "Indebtedness" Distortion

122. Not only do Glendale/SALAD give only half the story, the half they give is rife with distortions. Particularly egregious is SALAD's assertion that NMTV's directors were "deeply indentured to, indebted to, and in debt to TBN." (SALAD PFCL ¶27.) That claim is beyond reckless -- it is blatantly false.

123. Referring to Pastor Espinoza, SALAD asserts that "when asked to join the NMTV Board, he was in financial difficulty and TBN was his creditor; thus, TBN kept the proceeds of pledges of Espinoza's television program." (*Id.* ¶25.) However, the cited testimony suggests nothing of the sort. To the contrary, the record establishes that Pastor Espinoza is an ordained minister of the Assemblies of God Church and the Pastor of a church that was founded by his father in 1926 and at which

he has worked since 1952. (TBF PFCL ¶83.) From 1976 to 1986, Pastor Espinoza produced a Spanish language program which aired weekly on KTBN. (Id. ¶84.) During the first few years, Pastor Espinoza paid all production costs and retained all funds solicited during the program. (Tr. 4129.) Pastor Espinoza testified that approximately three or four years after the program began, "the financial pressure became too great, and I felt that I could not continue paying for the program." (Tr. 4130, 4134-35.) He therefore informed Dr. Crouch that he was planning to terminate the show because he could no longer afford the production costs. (Id.) In response, Dr. Crouch asked him to continue and agreed to underwrite the production costs. (Id.) In exchange, any funds that Pastor Espinoza solicited on the station were given to TBN. (Tr. 4130-31.) That was the arrangement until the program ended in 1986. (Tr. 4131)

124. Significantly, all of that occurred before NMTV had even filed its applications to acquire the Odessa and Portland construction permits (February 1987 and December 1987, respectively), before those applications were granted, and before any decisions had to be made concerning the stations' operations. Moreover, during the time that he produced the program, Pastor Espinoza received nothing from TBN other than whatever correspondence was sent with donations that had been solicited during the program. (Tr. 4131-32.) Pastor Espinoza would respond to such correspondence by sending books or other materials that he paid for entirely on his own. (Tr. 4132-33.) He received no

loans or other financial assistance from TBN to cover these costs, nor did he ever ask for any. (Tr. 4132-34.) Thus, there is nothing about Pastor Espinoza's testimony that even remotely supports SALAD's characterization of the record.

125. Equally specious is SALAD's claim that Pastor Aguilar was a TBN debtor because he was "a TBN programmer" whose ministry TBN supplied with "money and with large tracts of real property in three states." (SALAD PFCL ¶26.) As an initial matter, the claim that Pastor Aguilar was a TBN programmer is a reach, at best. Rather, the record establishes that his church produced a one hour television special that was broadcast on KTNB. (TBF Ex. 107, Tab A, p. 3.) He also appeared on TBN programming several times as a guest and a representative of his Set Free ministry. (TBF PFCL ¶123.) However, he was never compensated for any of these appearances. (TBF Ex. 107, Tab A, pp. 9-10.) Furthermore, Set Free cooperated for some time in an internship program with TBN which permitted Set Free members to learn broadcast production skills from TBN employees. However, that program ended in early 1993 due to a lack of interest among Set Free members. (TBF PFCL ¶124.) There is simply no merit to SALAD's distorted claim.

126. Nor does the record show that Pastor Aguilar or his ministry was indebted to or financially dependent upon TBN or Dr. Crouch. From approximately 1984 until early 1993, TBN used volunteers from Pastor Aguilar's church to help administer TBN's

His Hand Extended ministry. Moreover, church members also served as TBN Prayer Partners and helped to distribute donated items to members of the community. For these services, TBN provided Set Free with \$5,000 per month, an amount which Pastor Aguilar testified unequivocally was a "very insignificant" part of the church's budget. (Id. ¶123.) Additionally, TBN gave Set Free the use of two houses in Anaheim, California, a tract of land and three houses in Colleyville, Texas, and a tract of land and an old farmhouse in Ottawa, Illinois, all without cost so long as Set Free maintained the necessary casualty and liability insurance. (Id.; TBF Ex. 107, Tab A, p. 6.)

127. However, there was nothing at all unusual about this, because Set Free had similar arrangements with other benefactors. When TBN made these properties available to Set Free, Set Free was already maintaining 14 homes donated to it by the City of Anaheim and various individuals. (TBF PFCL ¶124; TBF Ex. 107, pp. 210-211.) Pastor Aguilar testified unequivocally that none of these donors has ever "said anything about how we run our homes or never would say anything about how we run our homes....there are no strings attached." (TBF Ex. 107, pp. 211-12.) Hence, there is no legitimate basis for SALAD to claim that Pastor Aguilar or his ministries were indentured "captives" of TBN or Dr. Crouch. Nor is there any evidence -- and SALAD cites none -- that Pastor Hill or Dr. Ramirez, both of whom have served as full-time ministers of well-established churches since

before NMTV's inception, have any financial dependence on or indebtedness to TBN or Dr. Crouch. (TBF PFCL ¶¶150-51, 168-70.)

(ii) Other Distortions

128. Glendale/SALAD have distorted the Directors' testimony in other ways as well. For instance, they contend that Pastor Espinoza "knew nothing" about whether his co-directors had earned salaries. (SALAD PFCL ¶31; Glendale PFCL I ¶134.) However, an honest reading of the cited passage shows that he could not recall whether Mrs. Duff or Dr. Crouch had earned salaries from TTI, NMTV's predecessor. (Tr. 4148-49.) Similarly, SALAD asserts that Pastor Espinoza "knew nothing....about how Odessa TV earnings were determined" (SALAD PFCL ¶31), and Glendale/SALAD complain that he did not know the "details" concerning the revenue formula (Glendale PFCL I ¶136). Yet the cited testimony reflects that Pastor Espinoza knew that a zip code formula had been used "to gauge the amount of revenue that is coming in from the different zip code areas. That was my understanding." (Tr. 4163.) Moreover, on the issue of how the money was divided between TBN and NMTV, he explained that "I remember talking about it with Mrs. Duff, but I couldn't give you any details right now, sir. I honestly don't remember." (Tr. 4163-64.)

129. Likewise, SALAD avers that Pastor Espinoza "knew nothing....[about] what the terms of TBN's loan to NMTV were." (SALAD PFCL ¶31.) Yet the cited testimony reflects that Pastor